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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,568	02/27/2002	Ming Li	600-019 CON	1343
7590	02/13/2004		EXAMINER	
Daniel P. Malley Wall Marjama & Bilinski LLP Suite 400 101 South Salina St. Syracuse, NY 13202			SEDIGHIAN, REZA	
			ART UNIT	PAPER NUMBER
			2633	3
DATE MAILED: 02/13/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/084,568	LI ET AL.
Examiner	Art Unit	
M. R. Sedighian	2633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 27 February 2002.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-35 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-35 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 27 February 2002 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

13)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a)  The translation of the foreign language provisional application has been received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ . 6)  Other: \_\_\_\_\_ .

### **Double Patenting**

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-35 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-35 of prior U.S. Patent No. 6,414,765. This is a double patenting rejection. As to claims 1-27 and 29, both application claim a protection switch in a node of a two-fiber optical channel shared protection ring, wherein the node including a plurality of primary clients and a plurality of pre-emptible clients, each fiber in the two-fiber optical channel shared protection ring propagating at least one working wavelength channel dedicated to primary client traffic and at least one protection wavelength channel which may accommodate extra client traffic, the protection switch comprising: an optical signal monitor coupled to the two-fiber optical channel shared protection ring, the optical signal monitor being operative to detect multi-wavelength channel failures and single wavelength channel failures in the two-fiber optical channel shared protection ring; and an electrical switching circuit coupled to the optical signal monitor, the electrical switching circuit being comprised of a plurality of modular switching fabrics, each modular switching fabric of the plurality of modular switching fabrics including a ring switch mode that is responsive to at least one of the multi-wavelength channel failures, and a span switch mode that is responsive to at least one of the single wavelength channel failures. As to

claim 28, both application claim a modular switching fabric for use in a protection switch resident in a node of a two-fiber optical channel shared protection ring, each node including a plurality of primary clients and a plurality of pre-emptible clients, each fiber of the two fibers propagating at least one working wavelength channel dedicated to primary client traffic and at least one protection wavelength channel which may accommodate extra client traffic, the protection switch comprising: a first 3x1 switch coupled to a first primary client receiver; a first 2x1 switch coupled to a first extra client receiver; a second 3x1 switch coupled to a second primary client receiver; a second 2x1 switch coupled to a second extra client receiver; and a controller coupled to the first 3x1 switch, the second 3x1 switch, the first 2x1 switch, and the second 2x1 switch, the controller being operative to actuate the switches in order to receive the primary client's receive signal from a protection wavelength propagating on the first fiber instead of a working wavelength channel propagating on the second fiber, and pre-empt extra client traffic, in response to a multi-wavelength channel failure. As to claims 30-31, both application claim a two-fiber optical channel shared protection ring for bi-directional communications between a plurality of nodes, each node including a plurality of primary clients and a plurality of pre-emptible clients, each fiber of the two fibers propagating at least one working wavelength channel dedicated to primary client traffic and at least one protection wavelength channel which may accommodate extra client traffic, the protection switch comprising: a first 3x1 switch having inputs coupled to a first primary client transmitter, a first extra client transmitter, and a second primary client transmitter; a first 2x1 switch having an input coupled to the first extra client transmitter and an output connected to the first 3x1 switch; a second 3x1 switch having inputs coupled to a first primary client transmitter, a second extra client transmitter, and a second

primary client transmitter; a second 2x1 switch having an input coupled to the second extra client transmitter and an output connected to the second 3x1 switch; and a controller coupled to the first 3x1 switch, the second 3x1 switch, the first 2x1 switch, and the second 2x1 switch, the controller being operative to actuate the switches in order to switch a primary client's transmission signal from a working wavelength propagating on a first fiber of the two fibers to a protection wavelength propagating on a second fiber of the two fibers in response to a multi-wavelength channel failure. As to claims 32-35 both application claim a method for switching bi-directional traffic between a plurality of nodes in a two-fiber optical channel shared protection ring, each node including a plurality of primary clients and a plurality of pre-emptible clients, each fiber of the two fibers propagating at least one working wavelength channel dedicated to primary client traffic and at least one protection wavelength channel which may accommodate extra client traffic, the method comprising: providing a protection switch in each node of the plurality of nodes, each protection switch being coupled to the two fibers, the plurality of primary clients, and the plurality of pre-emptible clients, wherein the protection switch includes a plurality of modular switching fabrics; detecting a fault condition in the two-fiber optical channel shared protection ring; actuating at least one of the modular switching fabrics in response to the step of detecting, whereby a primary client's transmission signal is switched from a working wavelength propagating on a first fiber of the two fibers to a protection wavelength propagating on a second fiber of the two fibers, switching the primary client's receive signal from a working wavelength propagating on the second fiber to a protection wavelength propagating on the first fiber, and pre-empting extra client traffic.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. R. Sedighian whose telephone number is (703) 308-9063. The examiner can normally be reached on M-F (from 9 AM to 5 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on (703) 305-4729. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

*M.R. Sd*  
M.R. SEDIGHIAN  
Patent Examiner  
Art Unit: 2633